IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2089 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUDARRBHAI JESANGBHAI PRAJAPATI & 2 - Appellant(s)
Versus
RAJENDRAKUMAR HARIBHAI DESAI & 1 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2
MR SANJAY M AMIN for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant (s) : 2

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/01/2007

ORAL JUDGMENT

1. The appellants are the original driver and owner of the offending vehicle. Initially they along with the insurance company i.e., the New India Assurance Co., Ltd., challenged the judgment and award made by MACT

[Main] Mehsana in MACP No. 829 of 1987 dated 28th April, 1993. However, the insurance company i.e., original appellant no. 3 has been transposed as respondent no. 2, at the request of the learned advocate for the appellants by order dated 17th January, 2007 and the appeal is, therefore, prosecuted by respondents no. 1 and 2 i.e., the driver and the owner of the vehicle.

2. The accident in question took place on 23rd April, 1987. Respondent no. 1 who is the original claimant along with one Babubhai Ramjibhai Desai was going on the motorcycle no. GTN 2220 from Kalol to Mehsana. Respondent no. 1 was sitting on the pillion seat of the motorcycle. According to him, appellant no. 1 drove his vehicle in a rash and negligent manner and caused the accident. As a result of the same, respondent no. 1 received serious injuries on his right leg and also other parts of the body. He, therefore, preferred the aforesaid petition for claiming compensation under Section 110 A of the Motor Vehicles Act. He claimed Rs.1 lakh by way of compensation.

3. The appellants though served did not file any written statement, though they had engaged the advocate who remained on record till 27th April, 1993. Respondent

no. 2 insurance company filed the written statement at Exh. 21. They denied the averments made in the petition and also denied the involvement of the truck in question. The Tribunal on the basis of the evidence adduced before it decided that the accident occurred on account of rash and negligent driving of appellant no. 1. The Tribunal also assessed compensation at Rs.44,400=00 with running interest at the rate of 15% per annum from 2nd January, 1991 till realization and proportionate costs. It further held that original opponents no. 2 and 3 i.e., appellant no. 2 and respondent no. 2 being the owner and the insurance company of the offending vehicle were liable to pay the compensation to respondent no. 1. Hence, this appeal.

4. The sole submission of Mr. R.H. Mehta learned advocate for the appellants is that there is no reliable evidence to establish that the truck bearing registration no. GRW 1864 was responsible for causing the accident in question. As against that learned advocate Mr. A.B. Munshi appearing for Mr. Sanjay Amin learned advocate for the respondent no. 1 has supported the judgment and submitted that this appeal has no merits and it is required to be dismissed.

5. I have carefully considered the rival submissions. I have also perused the record and proceedings of the case. So far as the issue of negligence is concerned, I have perused the discussion. That finding is not even challenged by Mr. Mehta. The discussion shows that the view taken by the Tribunal is absolutely legal and proper and no interference is required by this Court.

6. So far as involvement of the vehicle in question is concerned, such contention was raised before the Tribunal. It has been adequately dealt with by it in paragraph 9 and 10 of the judgment. It is observed by the Tribunal that so far as the appellants are concerned, they have not taken up any such defence in the proceedings. In fact they have not filed any written statement, even when for sometime they were represented by their advocate. The insurance company i.e., respondent no. 2 has made some faint attempt by way of general denial that the vehicle was not involved. However, during the course of hearing later on it produced xerox copy of the claim form which was filed by appellant no. 1 before it on 9th July, 1990. The production was much after the evidence of respondent no. 1 was recorded. It was produced with a view to substantiate their say that the

vehicle was not involved in the accident. However, no such defence in concrete way was taken by respondent no. 2. This is now the appeal of the driver and the owner. As already stated, they have not contested the claim petition. Therefore, now it does not lie in their mouth to agitate this question before this Court. The Tribunal has even turned down the contention of the insurance company on this line by giving adequate reasons in paragraph 9 and 10 of the judgment. In view of the same, I do not find any merits in this appeal and it is dismissed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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